

1 to writing. We amended the contract effective as
2 of January 1 to reduce the switching fee to four
3 cents per minute and to reduce the management fee
4 to seven and a half percent but including an
5 allocation for sales and marketing expenses.

6 Q. First we'll look at the switching fee.
7 Why was that changed?

8 A. We are in the process of a transition
9 in our system, Comcast Cellular system, from
10 Motorola equipment to AT&T equipment which has
11 been publicly announced. In connection with
12 that, we have put forth a number of proposals to
13 Ellis Thompson Corporation for how it wished to
14 proceed, whether it wished to retain the Motorola
15 equipment or transition with our system to AT&T
16 equipment.

17 In the course of doing that, we
18 reviewed the switching fees that had been paid.
19 And it was felt that, in light of the cost of the
20 switch and the number of minutes which are now
21 being generated on this system, that the
22 switching fee would be more appropriately four
23 cents.

24 Q. Now, you're referring to the switch in
25 Wilmington, correct?

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1 A. That's correct, yes.

2 Q. And the Atlantic City system shares
3 that switch, correct?

4 A. That's correct.

5 Q. Do any other systems in any other
6 markets share the Wilmington switch?

7 A. Yes, the Wilmington switch operates the
8 Wilmington cellular system as well as the Dover
9 cellular system. It also operates a number of
10 cell sites within the Philadelphia system.

11 Q. Do they pay the same four cent rate?

12 A. I'm sorry?

13 Q. Does the Dover system pay the same four
14 cent rate?

15 A. At this time I believe the Dover system
16 pays a five cent rate. I believe so, I'm not
17 positive of that.

18 Q. What factors went into deciding the
19 four cent rate, that that was a reasonable rate?

20 A. I'm a little out of my element here in
21 terms of defining what the rate -- how the rate
22 was determined.

23 Q. I don't want you to guess, so if you
24 don't know.

25 A. I believe what we did was take a rough

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1 estimate of the cost of the switch as proposed to
2 us, the AT&T switches proposed to us by AT&T, and
3 based upon that and a number of other factors
4 figured out a rate.

5 Q. You also mentioned that the management
6 fee has been changed to seven and a half percent?

7 A. Uh-huh.

8 Q. Why was that changed?

9 A. Ellis Thompson had requested a decrease
10 in the management fee from nine percent to seven
11 and a half percent which we had been discussing
12 for sometime in 1994. And after negotiation it
13 was determined that we would reduce it to seven
14 and a half percent.

15 Q. Do you know what standard industry
16 practices have as a typical management fee?

17 A. No.

18 MR. WEBER: I'd like to have this
19 exhibit marked as Smith Exhibit 2. For the
20 record it is a multipage document titled Cellular
21 One License Agreement with Bates stamps running
22 AM 144461 through 144496.

23 (Smith Exhibit No. 2 was
24 marked for identification.)

25 BY MR. WEBER:

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1 Q. Have you ever seen this document
2 before?

3 A. Yes, I have.

4 Q. And can you tell me what it is?

5 A. This is a licensing agreement between
6 the Cellular One Group and Ellis Thompson
7 Corporation.

8 Q. Do you know who made the decision to
9 enter into the franchise agreement with Cellular
10 One?

11 A. Yes.

12 Q. And who did that?

13 A. Ellis Thompson.

14 Q. Do you know how that decision was made?

15 A. No, I do not. Prior to my arrival at
16 Comcast, I believe the Atlantic City system had
17 been using the Cellular One name as part of
18 its -- in offering its services. And in 1992 the
19 Cellular One Group determined that it wanted all
20 the entities which used its name to enter into a
21 new license agreement.

22 Q. And this is the new agreement?

23 A. And this is the new agreement.

24 Q. Do all the Comcast systems have license
25 agreements with Cellular One?

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1 A. No.

2 Q. Do any of the other Comcast systems?

3 A. Yes, all but one do.

4 Q. And which is the one that doesn't?

5 A. The system in Philadelphia.

6 Q. Is the Atlantic City system part of a
7 wide area system?

8 A. I'm not sure what's meant by wide area
9 system.

10 Q. You've never heard it referred to as
11 that?

12 A. No, not in those terms. I need to get
13 a better sense of what you mean by wide area
14 system to answer that question.

15 Q. Is the Atlantic City system operated in
16 conjunction with any other systems within that
17 same general area?

18 A. To the extent that there are shared
19 switching and engineering services, yes. To the
20 extent that there are separate rate plans,
21 separate marketing plans, separate naming of the
22 systems -- I should point out that the Comcast
23 systems have a different licensing agreement with
24 Cellular One Group -- the answer is no.

25 MR. WEBER: I'd like to have this

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1 marked as Smith Exhibit 3. It is a one-page
2 letter with attachment dated June 22, 1994, Bates
3 stamped AM 143952 through 143953.

4 (Smith Exhibit No. 3 was
5 marked for identification.)

6 BY MR. WEBER:

7 Q. Have you ever seen this document
8 before?

9 A. I'm copied on it so I must have, but I
10 can't recall as of right now.

11 Q. Can you tell me who John Moerman is?

12 A. John Moerman is the general manager of
13 the Wilmington and Dover cellular systems and
14 acts in the capacity of general manager of the
15 Atlantic City system.

16 Q. Do you know if this recommended pricing
17 schedule was eventually adopted?

18 A. I do not.

19 Q. If you'll notice, on the bottom of the
20 attachment, there's a statement, the extended
21 local area defined as CGSA's of
22 Allentown/Reading, Philadelphia, Wilmington,
23 Dover, Ocean, Mercer, and Cumberland Counties,
24 New Jersey.

25 A. Uh-huh.

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1 Q. Are all those systems managed by
2 Comcast?

3 A. No. The Allentown/Reading system I
4 believe is owned by Vanguard. The Ocean system,
5 at least as of this week, is owned by McCaw and
6 as of this letter would have been owned by McCaw,
7 previously owned by Midland Communications and
8 Kingdon News. Philadelphia, Wilmington, Mercer,
9 are owned by Comcast also. Cumberland County is
10 owned by TDS.

11 MR. WEBER: I'd like to have this
12 marked as Smith Exhibit 4. For the record it is
13 a five-page document titled Intercarrier Roamer
14 Service Agreement, Bates stamped AM 131772
15 through 131776.

16 (Smith Exhibit No. 4 was
17 marked for identification.)

18 BY MR. WEBER:

19 Q. Disregarding the handwriting on the
20 document, do you recognize it?

21 A. I have never seen this document
22 before.

23 Q. Have you ever seen a document similar
24 to this, again not taking into account the
25 handwriting?

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1 A. Typically I do not deal directly with
2 the intercarrier roaming service agreements. So
3 I'm familiar with the concept, but not with this
4 specific document.

5 Q. Who deals with the roaming agreements
6 at Comcast?

7 A. A woman by the name of Pam Petrine.

8 Q. Does Ms. Hillman deal with the roaming
9 agreements?

10 A. I do not believe she does, although Pam
11 Petrine indirectly reports to her.

12 Q. How often are you in contact with
13 Mr. Thompson?

14 A. As an attorney I typically feel
15 uncomfortable speaking directly to Mr. Thompson.
16 I am in contact with Mr. Lokting.

17 Q. How often are you in contact with
18 Mr. Lokting?

19 A. It varies. I would estimate that I
20 speak with David no less than two times a month;
21 depending upon the time frame, it being more
22 active than that or less. But I think that's a
23 fair average for the year.

24 Q. Has Mr. Thompson ever given you
25 instructions either directly or through

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1 Mr. Lokting?

2 A. Yes.

3 Q. And can you give us examples?

4 A. Comcast Cellular has embarked on a
5 number of occasions to create new features and
6 services for its customers; for example, NACN
7 which is the National Calling Network delivery
8 service, an insurance program.

9 What I have done in those instances is
10 advised Mr. Lokting of our movement in those
11 areas and asked him whether he would be
12 interested in our pursuing that on his behalf as
13 well. And he has directed me to proceed and then
14 to advise him once contracts have been developed
15 for Comcast Cellular and then passed them to him
16 so that he could review them for his client.

17 A specific example would be the
18 insurance contract which Comcast subsidiaries
19 entered into with Signal in which that contract
20 was negotiated by Comcast Cellular and then the
21 form of the contract was provided to Mr. Lokting
22 for his review to determine whether his client
23 desired to enter into a similar arrangement with
24 Signal.

25 Q. And did they enter into a similar

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1 agreement with Signal?

2 A. I believe they did, yes.

3 Q. Are there contracts that the other
4 Comcast subsidiaries have entered into which
5 Ellis Thompson Corporation declined to enter
6 into?

7 A. Yes.

8 Q. And can you tell us what those are?

9 A. We entered into a roaming rate
10 reduction with McCaw and I also believe with
11 Southwestern Bell which Ellis Thompson
12 Corporation declined to enter into.

13 Q. And do you know why they declined to do
14 so?

15 A. They didn't want their roamer rates
16 reduced.

17 Q. How often are corporate meetings held
18 for the Atlantic City system?

19 A. Quarterly generally.

20 Q. Are you typically in attendance at
21 those meetings?

22 A. Since my coming to Comcast, I have been
23 in attendance I believe in all those meetings,
24 yes.

25 Q. Does Mr. Thompson attend all the

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1 meetings?

2 A. Yes, with the exception of one since
3 I've been here, he has attended all the meetings.

4 Q. Has Mr. Lokting attended all the
5 meetings?

6 A. Yes.

7 Q. Was he at the one that Mr. Thompson was
8 not at?

9 A. Yes.

10 Q. What role do you play at these
11 meetings?

12 A. Unfortunately I first played the role
13 of scheduler of the meetings with Mr. Lokting and
14 prior to the meeting discussing with Mr. Lokting
15 the agenda and then afterwards primarily
16 listening and contributing where I deem
17 appropriate.

18 Q. Are you ever required to give
19 presentations at the meetings?

20 A. I do not give the presentations at the
21 meetings. The meetings -- presentations are
22 usually from the sales and marketing people in
23 terms of their reports, Mr. Watson or Ms. Hillman
24 in terms of financial issues and Mr. Dombroski
25 now with respect to engineering matters. To the

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1 extent that there are any special issues at those
2 meetings which require me to speak, I will
3 obviously do so.

4 Q. You mentioned a number of different
5 things here. First you said sales and marketing
6 people would give presentations or give their
7 reports?

8 A. Uh-huh.

9 Q. Who in the sales and marketing
10 divisions typically?

11 A. Mr. Watson typically. I believe there
12 have been occasions where Mr. Moerman has spoken
13 for him when Mr. Watson could not attend, but
14 that's been rare.

15 Q. And who is Mr. Watson?

16 A. He currently holds the title senior
17 vice-president of sales and marketing for Comcast
18 Cellular.

19 Q. And what is Mr. Dombroski's title?

20 A. Mr. Dombroski is vice-president of
21 engineering. He's held that title since roughly
22 May of 1994. Prior to that he was vice-president
23 of special projects and had very little contact,
24 if any contact, with Ellis Thompson Corporation.
25 Preceding him was Dominic Villecco who was

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1 vice-president of engineering.

2 Q. And is Mr. Villecco still with the
3 company?

4 A. He is with Comcast International, a
5 division of Comcast Corporation, a different
6 division.

7 Q. But also was once in charge of
8 engineering?

9 A. For Comcast Cellular, yes.

10 Q. Discuss the role that Mr. Thompson
11 plays at these meetings?

12 A. Mr. Thompson listens to the reports,
13 asks questions, and, to the extent approvals are
14 needed, consults with Mr. Lokting and either
15 gives them or denies them.

16 Q. Discuss the role that Mr. Lokting plays
17 at these meetings?

18 A. Mr. Lokting typically takes notes and
19 advises Mr. Thompson.

20 Q. What is your telephone number?

21 A. (610) 995-3760.

22 Q. And has this been your telephone number
23 since you've been with Comcast?

24 A. No, it has not. In addition I have
25 been able to be reached at (215) 981-7754 and

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1 before the 610 area code split at (215)
2 975-5198.

3 Q. Good memory. The (215) 981-7754, was
4 that when the offices were in Philadelphia?

5 A. That's when my office was in
6 Philadelphia. I have maintained two offices for
7 a time, both in Philadelphia and in Wayne. In
8 fact, I still receive telephone calls at that
9 number when I'm downtown.

10 Q. Comcast still has offices in
11 Philadelphia?

12 A. Yes, it does.

13 Q. To your knowledge were your phone
14 records produced?

15 A. I believe our phone records were not
16 produced.

17 Q. If the bureau decides we need to review
18 your phone records, would it be possible to have
19 them produced? If you want to go off the record
20 to consult, that's fine.

21 (Witness confers with counsel.)

22 THE WITNESS: There are three other
23 telephone numbers I'll give you if this is where
24 your inquiry is headed. There have been times I
25 have spoken to Mr. Lokting on my cellular phone

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1 which is (215) 816-8600 or it could have been
2 (215) 816-3331 or more recently (610) 316-6800.

3 BY MR. WEBER:

4 Q. And these last two numbers are from
5 where?

6 A. The 610 number again was a result of
7 the area code change, so that would have only
8 been since January or February. The prior two
9 numbers were a portable phone and an installed
10 phone.

11 Q. And I guess, if we come to a resolution
12 about if we decide we want to see the records,
13 will it be possible? I don't know yet if we're
14 going to want to.

15 A. I have no idea whether or not that
16 would -- what the feasibility would be of pulling
17 the records for the various phone numbers. But
18 we certainly will cooperate with you to the
19 extent we can.

20 Q. Describe the process by which major
21 decisions are made regarding the Atlantic City
22 system?

23 MR. GURMAN: Could you define a major
24 decision.

25 BY MR. WEBER:

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1 Q. Well, let's approach it a different
2 way. How many cells are currently operating in
3 the Atlantic City system, do you know?

4 A. I believe eight.

5 Q. Have cells been added since the initial
6 construction?

7 A. Yes.

8 Q. Was Mr. Thompson's approval required to
9 add additional cells?

10 A. Absolutely, yes.

11 Q. Can you tell us how that type of
12 decision would have been made?

13 A. Typically the engineer in charge,
14 whether it would be Mr. Villecco or more recently
15 Mr. Dombroski, would at one of our meetings with
16 Mr. Thompson discuss with him the needs to --
17 their perspective in terms of the additional cell
18 sites which would be needed in the system.
19 Hopefully that would have been a conversation
20 that followed them having sent a package to him
21 in advance of the meeting, although not always.

22 At the meeting they would discuss their
23 recommended buildout plan. In the course of that
24 conversation, they would discuss the financial
25 consequences of building or not building with

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1 Ms. Hillman present. And then Mr. Thompson would
2 either make a decision there or we would leave
3 the room and allow him to make a decision, to
4 consult with Mr. Lokting, and he would make a
5 decision whether he would want to construct those
6 cell sites or not.

7 Q. Is all the engineering in-house, all
8 the system design done in-house?

9 A. We use some outside consultants, but
10 the preponderance of it is in-house, yes.

11 Q. To use any outside consultants, would
12 that decision have to be made by Mr. Thompson?

13 A. No. I don't want to speak in too much
14 of a generality there. My sense is the answer is
15 no to that, but it would depend on the magnitude
16 and whether those consultants were working
17 primarily or specifically for the Atlantic City
18 system at the time. But my sense is no.

19 Q. Has the system ever exceeded its budget
20 for any project?

21 A. Not that I know of.

22 Q. Are you anywhere within the
23 decision-making chain for the Atlantic City
24 system?

25 A. No. I typically allow the

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1 businesspeople to speak directly to Mr. Thompson
2 and will facilitate the conversations, but he
3 makes the decisions and they make their
4 presentations to him.

5 Q. Are you given any authority to act as
6 counsel for the Atlantic City system?

7 A. No, and would not if I were.

8 Q. Have you ever been approached by
9 anybody trying to have you act as counsel in
10 negotiating projects or contracts?

11 A. Yes.

12 Q. And what have you told the person?

13 A. I told them that I represent Comcast
14 Cellular and I do not represent Ellis Thompson
15 Corporation and it would require Ellis Thompson
16 Corporation's approval.

17 Q. Can you tell us who has approached you,
18 if you can recall?

19 A. There have been a number of occasions
20 where prospective lessees have asked -- I'll be a
21 little bit more descriptive. The process by
22 which we have contracts negotiated is first to
23 discuss them generally with Mr. Lokting and then
24 to proceed down a path with respect to lease
25 negotiations which are typically standard

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1 agreements, the form of which has already been
2 approved by Mr. Lokting. The same applies to
3 agent agreements.

4 After the negotiations are completed,
5 we send them to Mr. Lokting for him to arrange
6 for execution. There have been times where those
7 documents have been delayed in execution and
8 we've gotten inquiries from various lessors or
9 agents as to why I would not give them a letter
10 or some authorization or some acknowledgment
11 saying that they were going to be executed by
12 Mr. Thompson and that the deal was done, and I
13 have refused to do that.

14 MR. WEBER: I'd like to have this
15 marked as Smith Exhibit 5 which is a compilation
16 of actually three different documents which are
17 all different lease forms.

18 (Smith Exhibit No. 5 was
19 marked for identification.)

20 THE WITNESS: Okay.

21 BY MR. WEBER:

22 Q. You were just mentioning leases. Are
23 these leases similar to those you were just
24 discussing?

25 A. Yes.

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1 Q. Now, you said they're standard forms.
2 Did Comcast develop the initial standard lease
3 form?

4 A. Using outside counsel, yes.

5 Q. And is this the same type of form that
6 Comcast uses in its other markets?

7 A. It attempts to, yes.

8 Q. You played no role in the writing of
9 these leases?

10 A. No, I did not.

11 Q. Who at Comcast is in charge of
12 negotiating the leases with the landowners?

13 A. It falls within the engineering
14 department. And I could not tell you who
15 specifically has dealt with or currently deals
16 with the landlords in the Ellis Thompson system.

17 Q. Do you know who is in charge of finding
18 locations for the cell sites?

19 A. It would be the same persons who are
20 negotiating the leases. Again, in addition to
21 that, there is an RF engineering component, where
22 the engineers have to plot out on the map a
23 preferred zone for locating cell sites. Those
24 people would be different.

25 Q. Do you know if Mr. Villecco was ever

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1 one of the people who would have been out
2 negotiating with landlords?

3 A. I don't believe that he ever had direct
4 negotiations with landlords.

5 Q. And the same with Mr. Dombroski?

6 A. I just don't believe so, no.

7 Q. Do you know if Ellis Thompson
8 Corporation owns any of the sites on which they
9 have --

10 A. I do not believe they own any real
11 estate. They lease all of their space I
12 believe.

13 Q. Can you recall if Mr. Thompson ever had
14 any changes made to any of these leases -- not
15 these specific leases, but any of the leases on
16 which he has a site?

17 A. I do not recall.

18 Q. Have you ever discussed the ownership
19 of the Atlantic City system with any other
20 Comcast employees?

21 A. In my role as counsel to the Comcast
22 Corporation, yes.

23 Q. Have you ever discussed the control of
24 the Atlantic City system with other Comcast
25 employees?

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1 A. The same role, in my role as counsel,
2 yes.

3 Q. Why have you discussed the ownership of
4 the Atlantic City system with other Comcast
5 employees?

6 MR. GURMAN: Could you be somewhat more
7 specific.

8 MR. WEBER: Well, I am trying to avoid
9 obviously getting into privilege problems.

10 MR. GURMAN: Right.

11 BY MR. WEBER:

12 Q. I'll approach it a different way.

13 A. Let me answer the question at this
14 stage and you can tell me whether or not it's
15 what you're looking for. I consider it part of
16 my responsibility to remind employees of their
17 obligations with respect to the management of the
18 Atlantic City system.

19 There is a tendency, when you're in any
20 large organization and you're a businessperson,
21 to plow forward. And I am consistently reminding
22 people of a need to remain in contact with Ellis
23 Thompson. That's not to say that one disregards
24 their responsibility, but I just do it as a
25 cautious lawyer.

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1 Q. Can you recall any specific instance in
2 which you became concerned that the employee
3 needed to be reminded?

4 A. There was an instance -- as I mentioned
5 before, among the things that we have attempted
6 to do over the past few years is develop new
7 features and services. There was an instance
8 where we had -- we were preparing to roll out a
9 directory assistance service.

10 And, in the course of our conversations
11 about that, I reminded employees that, while we
12 could roll it out in every system, it could not
13 be rolled out in Atlantic City until a full
14 business case had been given to Ellis Thompson
15 Corporation and he had reviewed and approved it.

16 This was well in advance of the
17 rollout, there was no pressure involved in it, I
18 just needed to remind employees. And I think
19 that's typical of what I would do in any
20 circumstance, whether it's an insurance program,
21 NACN, whatever. There would always be a reminder
22 to think of their need to contact Ellis Thompson
23 Corporation.

24 Q. Has there been a time when you actually
25 were concerned that they had forgotten their

1 responsibilities?

2 A. No.

3 Q. Has Mr. Lokting ever told you to remind
4 the employees about their responsibilities?

5 A. Never.

6 MR. WEBER: I would like to have this
7 marked as Smith Exhibit 6. This is a one-page
8 letter dated February 10, 1995, with Bates stamp
9 AM 146942.

10 (Smith Exhibit No. 6 was
11 marked for identification.)

12 BY MR. WEBER:

13 Q. Have you ever seen this letter before?

14 A. Yes.

15 Q. Did you do anything after receiving it?

16 A. Yes.

17 Q. What did you do?

18 A. Contacted Mr. Dombroski and
19 reemphasized the statement in Mr. Lokting's
20 letter.

21 Q. What did Mr. Dombroski say?

22 A. Let me correct that. As I recall now,
23 I'm not sure if I contacted Mr. Dombroski or the
24 woman who -- not Petrine. At the time it would
25 have been Traci Blank who acted as the leasing

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1 paralegal and reminded her of that. Her reaction
2 was I understand.

3 Q. No other actions were taken?

4 A. No other actions were taken.

5 Q. Who has check signing authority for the
6 Atlantic City system?

7 A. I believe that check signing authority
8 varies at different levels. John Moerman, Anna
9 Hillman, and Ellis Thompson Corporation -- I mean
10 Ellis Thompson.

11 Q. Do you know what restrictions, if any,
12 are placed on Mr. Moerman and Ms. Hillman?

13 A. I have a general idea but not
14 specifically.

15 Q. Do you know who has authority to incur
16 expenses on behalf of the Atlantic City system?

17 A. I believe it's consistent with the
18 check signing authority.

19 Q. Do you know what approval, if any, must
20 be incurred before expenses can be incurred?

21 A. The only approval I am familiar with is
22 the general budgeting process that is gone
23 through once a year, usually in one meeting,
24 sometimes in two meetings, where all operational
25 items are approved by Mr. Thompson. In terms of

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